

NOTES ON STANDARD RATIONS A, B AND C FOR DEPENDANTS
OF REFUGEES.

Standard Ration A for children under 3 years of age.

It is not stated whether the 100 g. whole milk refers to liquid milk or to dried milk; if the former the allowance is grossly inadequate and the diet deficient in good protein and calcium, and if the latter, it is generous and the diet will contain enough 'good' protein and calcium. In either case the amount of sugar (about 2 oz. daily) is surely excessive and would better be substituted to the extent of at least one half (25 g.) by extra cereal.

The flour, I assume, will be from whole or nearly whole wheat. This, in comparison with white flour, will provide better protein, more minerals, especially available Fe, and B vitamin. This applies also to the 'bread' ration in rations B and C.

Standard Ration B for children aged 3 to 15 years.

If the skim milk refers to 40 g. powder, the allowance is good; if to 40 g. liquid or reconstituted skim milk, it is very inadequate and the diet is very short of 'good' protein and of calcium salts.

Cod liver oil 5 g. daily is needed also for these older children and the amount of the ground nut oil could be reduced. Herring containing vitamins A and D is a more nutritious fish than cod, the muscle tissue of which is deficient in all vitamins.

The bread should be made from whole meal flour. Meat, in my opinion, is not necessary for children as it is

usually the most expensive item in a diet and the money spent on it could be very advantageously used for purchase of cheese or more milk.

Standard Ration C for adults.

Here again herring would be a good substitute for cod - the bread should be made from whole meal flour. The small amount of meat is probably needed to render the diet palatable for adults. It would be interesting to know, however, the proportion of the total cost of the diet needed for purchase of this small amount of meat.

The three above diets contain from 1,000 to 1,200 calories daily, an allowance which is quite inadequate for all but the young children. It is supposed that this is a basal ration which it is hoped that the refugees may be able to supplement.

The diet contains no provision of anti-scorbutic vitamin such as is contained in fresh fruit and vegetables, which is of great importance. Provision should be arranged by adding to the diet potatoes or any fresh fruit (especially oranges and lemons) or vegetables obtainable locally. If such are completely unobtainable, the anti-scorbutic principle would be provided if the peas, beans, etc., were germinated before consumption or if infusions of any non-poisonous green leaves were taken.

Harriette Chick.

Lister Institute, London, S.W.1.

9 November 1938.

*File
confidential*

*RSE
Horn*

DEPARTMENT OF STATE
WASHINGTON

December 17, 1938.

My dear Mr. President:

Frank Page just telephoned from Habana to say that according to one of the International Telephone and Telegraph people who has just gotten out of Spain, an insurgent offensive may be regarded as imminent. It is planned on such a scale that according to general belief in Barcelona it will decide the issue. It is believed that twenty-six divisions representing 300,000 men are massed on the Ebro with a striking force of 500 planes. The insurgents have received help of late from Germany and Italy in the form of material, planes and pilots, but not of troops. The objective is definitely the capture of Barcelona. The frontier has been closed for fear of plans leaking out. The weather has been extraordinarily bad of late but Mr. Page's

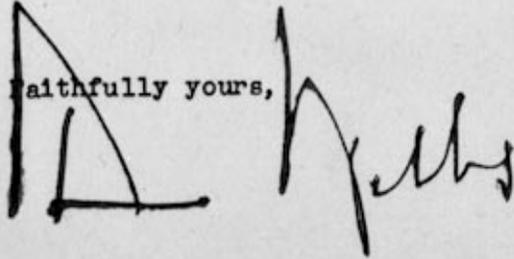
The President,

The White House.

informant said the attack was expected at any moment.

Believe me

Faithfully yours,

A handwritten signature in black ink, appearing to be "A. Kelly". The signature is written in a cursive style with a large initial "A" and a long horizontal stroke extending to the right.

PSF: Spain

THE ATTORNEY GENERAL
WASHINGTON

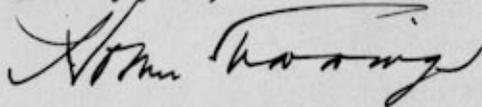
December 19, 1938.

My dear Mr. President:

Sometime ago you sent me certain papers dealing with the Spanish Embargo situation and asked me to return the file when I had finished with it.

In view of our conversation last night I think I have no need of these papers any further and am returning them herewith. I also enclose an unsigned memorandum prepared in the office of the Assistant Solicitor General. It occurred to me that if you follow the course discussed that night this memorandum may be of assistance to you.

Sincerely yours,



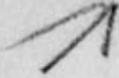
The President,
The White House.

PSF: Spain

THE WHITE HOUSE
WASHINGTON

UNDER SECRETARY OF STATE
DEC 21 1938
MR. WELLES

CONFIDENTIAL

file 

*11-5-63
CLF.*

December 21, 1938.

MEMORANDUM FOR

THE UNDERSECRETARY OF STATE

Please read and speak to me about this. This opinion is not official, so please do not let anyone see it.

F. D. R.

PSF: Spain

Petition

OF MEMBERS OF THE AMERICAN BAR TO

THE PRESIDENT OF THE UNITED STATES

WITH ACCOMPANYING MEMORANDUM
ON THE EMBARGO AGAINST SPAIN

*The President of the United States,
Washington, D. C.*

Sir:

We, the undersigned, members of the Bar of the several states of the United States, respectfully urge that you revoke the proclamation of May 1, 1937 imposing the embargo against Spain.

We firmly believe that such action is in the interests of our nation and that the continued existence of the embargo serves only to aid the forces of aggression and international lawlessness. The embargo constitutes a reversal of traditional American foreign policy; it weakens the authority of international law and the sanctity of treaties; it aids insurrection, promotes armed revolt, and encourages military aggression against lawfully constituted governments.

As members of the Bar, devoted to the ideals of democracy, liberty and justice, we ask the careful consideration of the accompanying memorandum. We believe that a consideration of the true character and effect of the embargo against Spain reveals that the presidential proclamation imposing the embargo should be revoked and that the United States should return to its honorable and historical policy in conformity with international law.

Respectfully submitted,

<i>Leslie J. Aker, Boise, Idaho</i>	<i>Carl Bogenrief, Des Moines, Iowa</i>
<i>Judge William A. Anderson, Minneapolis, Minn.</i>	<i>Nathan M. Botwin, Cleveland, Ohio</i>
<i>Henry F. Antes, Chicago, Ill.</i>	<i>Louis B. Boudin, New York City, N. Y.</i>
<i>Leigh Athearn, San Francisco, Cal.</i>	<i>David S. Bracker, Savannah, Ga.</i>
<i>Alfred B. Aubrey, Meriden, Conn.</i>	<i>James L. Brewer, Rochester, N. Y.</i>
<i>I. Duke Avnet, Baltimore, Md.</i>	<i>Maurice C. Brigadier, Jersey City, N. J.</i>
<i>Hart E. Baker, Chicago, Ill.</i>	<i>Charles A. Brodek, New York City, N. Y.</i>
<i>Albert S. Bard, New York City, N. Y.</i>	<i>R. C. Brown, Memphis, Tenn.</i>
<i>Nathaniel K. Beck, Pittsburgh, Pa.</i>	<i>Andrew Brunhart, Milwaukee, Wis.</i>
<i>Hon. Charles Belous, New York City, N. Y.</i>	<i>Prof. Leslie H. Buckler, University of Virginia</i>
<i>Burdette W. Bergman, Minneapolis, Minn.</i>	<i>Charles M. Butts, Las Vegas, Nev.</i>
<i>Edgar Bernhard, Chicago, Ill.</i>	<i>H. R. Bygrave, Boston, Mass.</i>
<i>Morris Berzon, Boston, Mass.</i>	<i>Alfred Jean Chartz, Carson City, Nev.</i>
<i>Alfred Bettman, Cincinnati, Ohio</i>	<i>Russell N. Chase, Cleveland, Ohio</i>
<i>Alfred Blaisdell, Calexico, Cal.</i>	<i>Stanley Chmiell, Buffalo, N. Y.</i>
<i>S. John Block, New York City, N. Y.</i>	<i>Aaron A. Cohen, Canton, Ohio</i>

- Dr. Felix S. Cohen*, Wash., D. C.
W. A. Combs, Houston, Texas
George C. Congdon, Kenneydale, Wash.
H. R. Cooke, Reno, Nev.
J. C. Crouch, Lafayette, La.
James E. Curry, Wash., D. C.
Hon. Maurice P. Davidson, New York City, N. Y.
N. S. Davis, Cleveland, Ohio
Hon. John D. Denison, Des Moines, Iowa
Chris Dixie, Houston, Texas
Prof. E. Merrick Dodd Jr., Harvard University
Judge George F. Dunklee, Denver, Colo.
Harry M. Edelstein, Wash., D. C.
Louis P. Eisner, New York City, N. Y.
H. Minor Esterly, Portland, Ore.
Michael W. Evanoff, Flint, Mich.
O. E. Farnham, Long Beach, Cal.
Lot L. Feltham, Salmon, Idaho
Ervin J. Flowers, Goose Creek, Texas
Osmond K. Fraenkel, New York City, N. Y.
Walter Frank, New York City, N. Y.
J. Allan Frankel, Los Angeles, Cal.
Abram S. Freedman, Jersey City, N. J.
Harry W. Freeman, Houston, Texas
Leo Gallagher, Los Angeles, Cal.
Edward Gaulkin, Newark, N. J.
Max E. Geline, Milwaukee, Wis.
Prof. Walter Gellhorn, New York City, N. Y.
Albert C. Gilbert, New York City, N. Y.
Joseph G. Glass, New York City, N. Y.
Solomon Golat, Newark, N. J.
Prof. George W. Goble, Urbana, Ill.
David Goldstein, Bridgeport, Conn.
Ernest Goodman, Detroit, Mich.
James H. Gould, Schenectady, N. Y.
Milton S. Gould, New York City, N. Y.
Prof. Herman A. Gray, New York University
Helen Hoy Greeley, Wash., D. C.
Dean Leon Green, Northwestern University
Samuel Handelman, Cleveland, Ohio
Prof. Fowler V. Harper, University of Indiana
Pearl M. Hart, Chicago, Ill.
Arthur J. Harvey, Albany, N. Y.
Prof. Harold C. Havighurst, Northwestern University
Arthur Garfield Hays, New York City, N. Y.
G. W. Hinman, Arlington, Wash.
Carl A. Huebner, Hammond, Ind.
Hon. Henry T. Hunt, Wash., D. C.
John C. Hurspool, Walla Walla, Wash.
Carl J. Hutton, Chicago, Ill.
Hon. Stanley M. Isaacs, New York City, N. Y.
Abraham J. Isserman, Newark, N. J.
Francis Fisher Kane, Philadelphia, Pa.
Judge Robert W. Kenny, Los Angeles, Cal.
Dorothy Kenyon, New York City, N. Y.
Hon. Paul J. Kern, New York City, N. Y.
D. W. King, Dallas, Texas
Dr. Milton R. Konvitz, New York University
Grover L. Krick, Minden, Nev.
Edward Lamb, Toledo, Ohio
W. J. Lamme, Arco, Idaho
Jerome Land, Cleveland, Ohio
Yetta Land, Cleveland, Ohio
Saul Liebman, New York City, N. Y.
Hon. Arthur Le Sueur, Minneapolis, Minn.
John F. Lewis Jr., Philadelphia, Pa.
J. T. Lindley, Leavenworth, Wash.
Edward F. Lombardo, Columbus, Ohio
Major William J. Mack, New York City, N. Y.
Arthur J. Mandell, Houston, Texas
Hon. Nathan R. Margold, Wash., D. C.
Ben Margolis, San Francisco, Cal.
Thurgood Marshall, New York City, N. Y.
John M. Maury Jr., Charlottesville, Va.
E. Anne Mazur, Chicago, Ill.
Louis F. McCabe, Philadelphia, Pa.
Hugh E. McElroy, Boise, Idaho
Prof. James A. McLaughlin, Harvard University
Joseph W. Meek, Tucson, Arizona
Samuel D. Menin, Denver, Colo.
Darwin J. Meserole, New York City, N. Y.
Earl E. Miller, Dallas, Texas
Don P. Mills, Cleveland, Ohio
E. P. Moran, Gig Harbor, Wash.
Otto Mullinax, Houston, Texas
H. H. Nordlinger, New York City, N. Y.
Hon. Patrick H. O'Brien, Detroit, Mich.
Arthur B. O'Keefe, New Haven, Conn.
Otto Oplatka, Berwyn, Ill.
Hon. Isaac Pacht, Los Angeles, Cal.
George Palda, Cleveland, Ohio
Col. Julius I. Peyser, Wash., D. C.

- Nathaniel Phillips*, New York City, N. Y.
Walter H. Pollak, New York City, N. Y.
Thomas M. Powers, Akron, Ohio
L. R. Pugh, Columbus, Ohio
Paul Ralli, Las Vegas, Nev.
Prof. Leon Ransom, Howard University
S. Roy Remar, Boston, Mass.
Maurice E. Resnick, Bridgeport, Conn.
Harold Riegelman, New York City, N. Y.
Mortimer Riemer, Wash., D. C.
Samuel L. Rothbard, Newark, N. J.
James P. Russell, Pocahontas, Iowa
Thos. J. Salter, Winnemucca, Nev.
Hymen Schlesinger, Pittsburgh, Pa.
Sylvia Schlesinger, Pittsburgh, Pa.
Wm. L. Scott, Las Vegas, Nev.
Harold P. Seligson, New York City, N. Y.
Prof. Malcolm Sharp, University of Chicago
Merryl F. Sichernan, Akron, Ohio
Benjamin C. Sigal, Pittsburgh, Pa.
Benjamin Silverman, Savannah, Ga.
S. Khan Spiegel, Philadelphia, Pa.
C. A. Stanfield, Hot Springs, Ark.
John B. Steen, Newport News, Va.
Vernon C. Stoneman, Boston, Mass.
- Prof. Wesley A. Sturges*, Yale University
Maurice Sugar, Detroit, Mich.
A. Ovrum Tapper, Chicago, Ill.
Dean William E. Taylor, Howard University
Thos. F. Terrell, Pocatello, Idaho
Mario B. Tomsich, Gary, Ind.
E. B. Velikanje, Yakima, Wash.
George C. Vournas, Wash., D. C.
Louis Waldman, New York City, N. Y.
Frank P. Walsh, New York City, N. Y.
Clare Warne, Los Angeles, Cal.
Emil Weitzner, New York City, N. Y.
Charlotte Tuttle Westwood, Alexandria, Va.
Carle Whitehead, Denver, Colo.
A. H. Wilkie, Idaho Falls, Idaho
Fred W. Wilkie, Idaho Falls, Idaho
Bradford G. Williams, Lakeland, Fla.
Justice James H. Wolfe, Salt Lake City, Utah
Harry M. Wolfe, Dayton, Ohio
Morris Wolfman, Las Vegas, Nev.
W. Theo. Woodward, De Land, Fla.
Herman Wright, Houston, Texas
Morton E. Yohalem, New York City, N. Y.
Harry Zukernick, Miami Beach, Fla.

(Partial List)

MEMORANDUM ON THE EMBARGO AGAINST SPAIN

The government of Spain now resident at Barcelona took office following the regular parliamentary elections of February 16, 1936.¹ On July 18, 1936, a revolt broke out led by army officers who commandeered virtually the entire military apparatus against the government. There is some evidence that Germany and Italy participated in the planning of the insurrection.² From the very outset, men, money and munitions poured into Spain from these countries in support of the rebels.³

The established government, entitled under international law⁴ to purchase the means of self defense from other states, found itself deprived of this legal right—and its sources of military supplies sharply limited—by the Non-Intervention Agreement entered into by the European powers at London in September 1936.⁵ Although both Italy and Germany accepted the obligation

1. "In the elections of February 16 and the run-off poll on March 1, the Popular Front scored a decisive victory. It elected approximately 258 deputies in the Cortes, to 62 representatives of the Center parties, and 152 of the Right." (Vide: *Foreign Policy Reports*, January 1, 1937, p. 254.)

2. The existence of a secret treaty between the Spanish conspirators and Germany and Italy, giving the latter nations a base for military operations on the Island of Minorca, is asserted in two books passed by the official German censorship: *What is Happening in the Mediterranean* (Das Geschehen im Mittelmeer, Berlin-Leipzig, 1937) by Mme. Margaret Boveris, editor of the Berliner Tageblatt; *The Mediterranean Basin*, (Der Mittelmeerraum zur Geopolitik eines maritimen Grossraums, Munich, 1937) by Hummel and Siewert. Cf. "*History of the Spanish War*", Comité International de Coordination et d'Information pour l'Aide à l'Espagne Republicaine, Paris, March 1, 1938, pp. 5-7, referring to a compact with Mussolini for Italian military aid in overthrowing the republic, as set forth in a memorandum dated March 31, 1934 made at Rome.

3. Mussolini's newspaper, *Il Popolo D'Italia*, stated: "Italy has not been neutral in this conflict, but has fought, and victory will be hers." (*New York Herald Tribune*, June 27, 1937.)

4. . . . The total number of Italian 'volunteers' in Spain has been variously stated, from the figure of 40,000 admitted by Italy to estimates of 60,000, 80,000 and more by certain observers in the country; the number of Germans, serving principally as technicians, fliers and artillery men, is usually put at 8,000 to 10,000. Cf. *New York Times*, March 14 and July 18, 1937; Matthews, *Two Wars and More to Come*, Chapt. XVII". (*Foreign Policy Reports*, May 1, 1938, p. 41.) Cf. "*Spain: Civil War*", Charles A. Thomson, *Foreign Policy Reports*, Jan. 15, 1937.

5. For an elaborate documentation presenting evidence of the presence of complete Italian army corps, German ships, planes, technical staffs and military personnel furnished by Italy and Germany, respectively, to the insurgents, see "*History of the Spanish War*", op. cit. pp. 10-14, and the "*Spanish White Book*" issued by the Spanish government.

4. See pp. 13-16 herein.

5. *New York Times*, Sept. 1, 12, 15, 1936.

embodied in that agreement, to refrain from providing war materials or combatants for either party in the Spanish conflict, it is a notorious fact that they have openly aided the insurgents.⁶

The United States has never been a party to this so-called "Non-Intervention Agreement." The Neutrality Act of 1935 was not applicable to the conflict in Spain since it applied only to wars between nations and not to civil strife.⁷ As will herein be established, the republican government, as the legal and established government of Spain, was entitled under international law, and in accordance with historic American foreign policy, and by virtue of our treaty with Spain, to continued commercial relations with our citizens, including the purchase of war materials. Accordingly, until January 1937, munitions were sold and exported from the United States to Spain.

In January 1937, Congress, with a minimum of debate (limited in the House to one hour⁸), passed a resolution prohibiting the shipment of war materials to Spain.⁹ This resolution, limited in its application to Spain, and adopted as a temporary, emergency measure pending the enactment of more comprehensive legislation, was later superseded by Public Resolution No. 27, enacted May 1, 1937.¹⁰ The resolution of May 1, 1937, prohibited the exportation of munitions to any foreign state upon a proclamation by the President that "a state of civil strife exists . . . and that such civil strife is of a magnitude or is being conducted under such conditions that the export of arms . . . would . . . endanger the peace of the United States . . .".¹¹ On the very same day, pursuant to said resolution, the President issued Proclamation No. 2236,¹² imposing the embargo against Spain.

6. See footnote 3.

7. Act of Aug. 31, 1935 (49 Stat. 1081; 22 U. S. C. 245a *et seq.*); subsequently amended by Act of Feb. 29, 1936 (49 Stat. 1153).

8. *Cong. Record*, Vol. 81, 75th Congress, 1st Session, Jan. 6, 1937.

9. Public Resolution No. 1, 75th Congress, 1st Session, approved January 8, 1937.

10. Public Resolution No. 27, 75th Congress (Chapt. 146, 1st Session, S. J. 51), approved May 1, 1937 (50 Stat. 121; 22 U. S. C. 245a, *et seq.*).

11. *Ibid.*, Section 1(c).

12. 2 *Federal Register*, 923 (1937), Export of Arms, Ammunition, and Implements of War to Spain.

The embargo has prevented the shipment of munitions to the republican government of Spain and has deprived that government of vitally needed materials with which to defend itself against insurrection and invasion. On the other hand, the embargo has not prevented the exportation of war materials to Germany and Italy,¹³ which openly and actively support the rebels.

We propose to demonstrate in this Memorandum that the interests of our nation require that the President, who has the power to lift the embargo, should do so, that the international situation existing at the time of the creation of the embargo in 1937 has materially changed and that the shipment of war materials to the government of Spain would not endanger our peace. We propose to demonstrate, further, that the embargo constitutes a repudiation of settled principles of international law, a reversal of traditional American foreign policy, and a violation of the treaty obligations of the United States to Spain.

The President Has the Power to Lift the Embargo

The resolution of May 1, 1937 provides that "*whenever,** in the judgment of *the President*, the conditions which have caused him to issue any proclamation under the authority of this section have ceased to exist, he *shall revoke the same*, and *the provisions* of this section *shall thereupon cease to apply* with respect to the state or states named in such proclamation . . .".¹⁴

The President is thus expressly vested with power, independently of Congress, to lift the embargo by revoking his previous proclamation in the event that he finds

13. See First Annual Report of the National Munitions Control Board for the year ending Nov. 30, 1936 (75th Cong., 1st Session, House Doc. No. 10), and Second Annual Report of the National Munitions Control Board for the year ending Nov. 30, 1937 (75th Cong., 3rd Session, House Doc. No. 465).

14. 50 Stat. 121, Sec. 1(g); 22 U. S. C. 245a (g).

*Unless otherwise indicated italics are ours.

that the conditions surrounding the issuance of the original proclamation have changed.¹⁵

15. The Presidential power to lift the embargo, it will be noted, is not affected by the embargo resolution of January 8, 1937, under which the Presidential power to lift the embargo thereunder imposed depended upon a finding that a state of civil strife no longer existed in Spain, for the embargo resolution of January 8, 1937 was superseded or repealed by the resolution of May 1, 1937. This is manifest from a consideration of the legal principles appertaining to the implied repeal of statutes, an examination of the circumstances surrounding the enactment of both resolutions, and the executive interpretation of said resolutions. The law is well settled that where there are two acts, one preceding the other in time, whether the later act supersedes or repeals the earlier act is a question of legislative intention (*District of Columbia v. Hutton*, 143 U. S. 18; *Posadas v. National City Bank*, 296 U. S. 497, 504; *People v. Dwyer*, 215 N. Y. 46, 109 N. E. 103). Legislative intention to repeal an earlier act by the enactment of a later act will be presumed where the legislature intended the earlier act to be temporary legislation pending the enactment of subsequent legislation, and where the later act covers the entire subject of the earlier act, embraces new provisions, and shows that it was intended as a substitute for the earlier act. (*Murdock v. City of Memphis*, 87 U. S. 590; *Stevens v. Biddle*, 298 F. 209; *Pekin Loan Co. v. Sollermann*, 365 Ill. 460, 6 N. E. (2d) 857; *Doyle v. Kirby*, 184 Mass. 409, 411, 68 N. E. 843.) In the instant case, Congressional intention to supersede or repeal the earlier resolution by the enactment of the later resolution is clear from the following:

First: The debate in Congress (during which the House sat as a Committee of the Whole) establishes that Congress intended the earlier resolution to be a temporary emergency measure, to be superseded by general and more comprehensive legislation subsequently to be enacted. This was made clear by Representative McReynolds, Chairman of the House Committee on Foreign Affairs: "This is an emergency, and for that reason we are asking that it apply only to Spain. Within the next 2 or 3 weeks a general neutrality bill will be presented to the House" Mr. Lanham: . . . My understanding is that the purpose of this resolution is not the enactment of general neutrality legislation but merely to correct a defect which has arisen through world circumstances that make an amendment to the present temporary neutrality law necessary, which still leaves it necessary for us later to enact general neutrality legislation. Is not that correct? Mr. McReynolds: The gentleman is correct . . ." (*Cong. Record*, Vol. 81, 75th Congress, 1st Session, pp. 87-88, Jan. 6, 1937). Virtually every member of Congress who spoke on the resolution stressed its temporary and emergency character and stated that the entire subject would soon be brought up during the same session for revision and full consideration. (*Ibid.*, pp. 74, *et seq.*)

Second: The later resolution covers the entire subject of the earlier resolution (Cf. Sections 1(c), 1(d), 5(d), 1(e), and 1(g) of the later resolution which cover all the subject matter of the earlier resolution).

Third: The later resolution embraces new provisions. The earlier resolution prohibits only the shipment of war materials, while the later resolution prohibits, in addition, the purchase or sale of securities of belligerents, the solicitation of war contributions, the travel of Americans on belligerent vessels, the arming of American merchantmen, etc.

Fourth: The later resolution changed the conditions under which an embargo might be imposed. In the earlier resolution, Congress found the mere existence of civil strife a condition sufficient to warrant imposing an embargo. In the later resolution, the Congressional policy was changed so as to require not merely the existence of a state of civil strife, but also a finding and proclamation by the President that such civil strife is of such character that the export of war materials endangers the peace of the United States. As Senator Pittman, Chairman of the Senate Committee on Foreign Relations, who introduced the later resolution, stated: "It is not intended that such embargo should be applied to foreign states wherein there is insurrection or strife of an insignificant character. *The strife must be of such magnitude or conducted in such manner that the export of arms,*

Change in the International Situation Since the Imposition of the Embargo

Important changes have occurred in the Spanish conflict and in the international scene since the imposition of the embargo in 1937. Prior to the embargo, international lawlessness had manifested itself in the Japanese invasion of Manchuria in 1931 and the Italian invasion of Ethiopia in 1935.

Since the imposition of the embargo, the intervention of Germany and Italy in Spain has become open and notorious and has proceeded upon a scale tantamount to German and Italian invasion of that country.¹⁶

Since that time Japan has, without declaration of war, invaded China. Despite military operations on a vast scale in China, the President has not issued a proclamation which would impose an embargo against the shipment of war material to China and Japan. The policy adopted

ammunition or implements of war from our country to such foreign state will endanger the peace of the United States; and the President must find such facts to exist, and so proclaim, before such provisions with regard to such state in which civil strife exists, go into effect." (*Cong. Record*, Vol. 81, 75th Congress, 1st Session, p. 1667). Thus, the later resolution, adopted after careful deliberation and debate changed the conditions warranting the imposition of an embargo. Under the earlier resolution, the embargo would continue so long as civil strife existed in Spain, even though the export of war materials to Spain would not endanger the peace of the United States and, indeed, even if the enforcement of the embargo endangered that peace. This is plainly contrary to the policy of Congress embodied in the later resolution, which provides for an embargo only where the export of munitions would endanger our peace.

Fifth: The civil strife in Spain is not excepted from the operation of the later resolution. The later resolution applies to civil strife in *any* foreign state: no state is excepted. If Congress had intended that in a particular case an embargo might be imposed even in the absence of the conditions required in the later resolution, such a particular case would have been written into the resolution in the form of an exception, just as an exception in the case of American republics was actually written into the resolution (see Section 4).

Sixth: In addition to the evidence of Congressional intention hereinbefore adduced, there must be added the weight of executive interpretation. As the United States Supreme Court has said: "It is a familiar rule of statutory construction that great weight is properly to be given to the construction consistently given to a statute by the Executive Department charged with its administration . . ." (*U. S. v. Jackson*, 280 U. S. 183). Executive construction is consistent only with repeal of the earlier resolution. If the embargo resolution of January 8, 1937 were in full force and effect, the Presidential proclamation of May 1, 1937 imposing the embargo would have been wholly gratuitous and unnecessary. Manifestly, it would be absurd to superimpose an embargo upon an existing embargo. The earlier resolution having been superseded it was necessary, if the embargo against Spain were to continue, that a Presidential proclamation be issued pursuant to the later resolution. The issuance by the President of Proclamation No. 2236, imposing the embargo against Spain, is consistent only with this construction.

16. See footnote 3.

* Addendum: This memorandum went to press on Sept. 1, 1938. The threat of German invasion of Czechoslovakia has since become a reality.

with regard to the Sino-Japanese conflict has been widely approved on the ground that the imposition of an embargo would not be "neutral", but would, in effect, aid the war-provoking forces.¹⁷ This policy must be contrasted with the policy pursued in the Spanish conflict.

Since that time, events in Central Europe have disturbed the peace of the world. In March 1938, Germany invaded and annexed Austria. In May 1938, Germany threatened to invade Czechoslovakia. This threat continues.

We have recently observed a serious, systematic and widespread infiltration of fascist influence in Latin America and in other portions of the Western hemisphere.¹⁸

Thus the course of aggression, initiated by the Japanese invasion of Manchuria and continued in the Italian invasion of Ethiopia, has expanded upon a world-wide scale.

The sincere advocates of peace who hoped that the embargo against Spain would localize the conflict and effect its speedy termination by shutting off the flow of munitions to both sides have learned from the course of international events and the progress of the conflict that the only effect of the embargo has been to deprive the legally constituted republican government of the means of self-defense. While the systematic aerial bombardments of civilian populations by the insurgents are universally condemned,¹⁹ it is the cruel result of the embargo that it deprives the government of the means of warding off these attacks. The embargo has thus deprived the government of vitally needed war materials, but it has permitted free access to these war materials to the fascist supporters of the insurgents, and therefore to the insurgents themselves. The embargo has therefore shifted the relation of forces in favor of the insurgents. It has served to aid the insurgents and thus fascist aggression. Far from quarantining the aggressor the embargo has quarantined the victim of aggression.

17. See Editorial, *New York Times*, June 15, 1938.

18. See Tomlinson, *New York Herald Tribune*, Aug. 7 to 13, 1938, inclusive.

19. Note the protest by the democratic governments, Pope Pius, the clergy of all denominations, and humanitarians throughout the world.

Lifting the Embargo Will Not Endanger the Peace of the United States

Historical and contemporary experience show that the lifting of the embargo would not endanger the peace of the United States.

The Republic of Mexico has shipped war materials to the Republic of Spain throughout the duration of the Spanish conflict and continues to do so. The peace of Mexico has not been endangered thereby.

The Sino-Japanese conflict has been raging for more than a year. Throughout this period, millions of dollars of war materials have been exported from the United States to both China and Japan²⁰ without endangering our peace.

The past history of the United States is replete with instances of commercial relations between our citizens and the established governments of nations in the throes of civil war. The United States, throughout its history, has insisted on the maintenance of a policy of continued commercial relations with a foreign country, despite the existence of civil war in such foreign country. Never has the maintenance of this policy endangered the peace of the United States, regardless of the result of the civil war, and regardless of the interests that other nations may have had in the success of the rebels.

Secretary of State Stimson, reviewing the practical effects of American foreign policy in this regard, declared in 1933 that the furnishing of military supplies by the United States to legitimate governments defending themselves against civil war, had resulted in "negligible friction". He declared that "our experience has shown that the refusal of the United States to allow munitions

20. For the last six months of 1937, exports to China, of aeronautical products alone, were valued at \$1,545,897; those to Japan for the same period were valued at \$1,651,063. This does not include the millions of dollars spent for other types of war materials. For the first seven months of 1938, licensed exports of war materials to China were valued at \$6,929,828.18, and to Japan at \$8,676,350.81. (See monthly Press Releases, Department of State.)

to revolutionists has never provoked serious resentment and has substantially stabilized conditions." This analysis involves an appreciation of the fact that the imposition of an embargo against a legal government would aid insurrection and would tend towards the destruction of that law and order which the United States has been so anxious to maintain—up to the time when the embargo against Spain was first imposed.

American experience since the imposition of the embargo has demonstrated that the sales and shipments of war materials by American citizens to Spain prior to the embargo in January 1937 have caused no difficulties whatsoever. These sales and shipments, it must be noted, were made for cash, the title passed in the United States, and transportation was in Spanish and other non-American vessels, so that neither American vessels nor credit were involved. There was accordingly no financial interest in the destination or successful transportation of the munitions after they left our shores as would give American citizens an economic interest in the conflict. It is significant that these sales and shipments of war materials by American citizens to the established government of Spain have not led to any protest or threat or so much as a suggestion of a threat to the United States from the insurgents or from the foreign nations which have aided them.

In view of the foregoing, the sale of war materials by American citizens to the republican government of Spain, which would become possible once the embargo were lifted, would not endanger our peace.

The Embargo Against Spain Violates Fundamental Principles of International Law

The law of nations is founded upon one basic principle: the mutual recognition of the legitimacy of state sovereignty. It is this mutual recognition which underlies all international relations.²¹

From this basic principle of mutual recognition flows the rule that no nation may take action inconsistent with the sovereignty of another or take any action which might call into question or interfere with the authority of the duly constituted government, whether that government be empire, monarchy, or republic.²²

It is clear that one of the greatest dangers to the authority of a legitimate government is insurrection. What is the obligation under international law of one nation to another imperiled by civil war?

It is firmly established in international law that when one established government is threatened with insurrection, it is the duty of sister governments to forbid shipments of arms to the insurgents and to permit their own subjects to supply war materials to the established government, the sister governments being privileged to aid directly. It is obvious that aid to insurgents against a recognized government is wholly inconsistent with friendly relations with that government. Accordingly, aid to insurgents is regarded in law as an act of hostility against the established government. Indeed the premature concession of "belligerent rights" (*i. e.*, equal rights of war) to insurgents has been deemed in international law, to constitute an act of great seriousness, so far as the legal government is concerned.²³

21. Moore, *Digest of International Law*, Vol. 1, Sec. 27, at p. 72.

22. Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, Vol. 1, p. 119; Moore, *Digest of International Law*, Vol. VI, Secs. 897-8, pp. 2-32.

23. Cf. *International Law Situations*, 1912, Naval War College, p. 10: "In time of insurrection there may be ample reason why a state of belligerency should not be recognized. The recognition of belligerency would place the party recognized and the established state upon the same plane as regards the rights of war." Cf. also: Hyde, *International Law*, Vol. 1, p. 78, n. 2: "Where a parent government is seeking to subdue insurrection . . . and the insurgents claim political, national, and belligerent rights which the parent government does not concede, a recognition by a foreign state of full belligerent rights, if not justified by necessity, is a gratuitous demonstration of moral support to the rebellion and of censure upon the parent government."

These canons of international law are not abstract generalizations formulated by theoreticians; they are living doctrines implemented and executed in the practice of the nations throughout the world in their relations with each other. Thus, the Sixth Pan-American Convention promulgated the Convention of Habana²⁴ which, under the heading "Rights and Duties of States in the Event of Civil Strife", provides:

"The contracting parties bind themselves to observe the following rules with regard to civil strife in another one of them: * * * To forbid the traffic in arms and war material, *except when intended for the government*, while the belligerency of the rebels has not been recognized, in which latter case the rules of neutrality shall be applied."

The United States was one of the signatory nations and has not repudiated this Convention.

The necessary implication of this doctrine is that no violation of neutrality is involved in the shipment of munitions by one government or its citizens to an established government in the throes of civil war. Rebels do not have the status of a government. Civil war does not involve a conflict of governments. *Neutrality*, as a legal concept, involves "two nations at war and a third in friendship with both".²⁵ *Neutrality*, accordingly, has nothing to do with civil war.

Our own Department of State has clearly enunciated the basic principle here involved. It has declared:

"There is here (in the delivery of a gunboat to Columbia) no *violation of neutrality* as there are *no governments* interested between which this government should be neutral. The supplies in question are destined for the aid of the legitimate government, for the maintenance of its integrity against insurgents; there does appear to be no possible ground, therefore, for considering a con-

24. Ratified by the United States, May 21, 1930. Cf. *International Traffic in Arms: Laws and Regulations* (U. S. State Dept., 4th ed., 1937).

25. Moore, *Digest of International Law*, Vol. 7, p. 860; see also statement of Dr. John Bassett Moore to the Senate Committee on Foreign Relations, hearings on S. 3474, Jan. 10 to Feb. 5, 1936, p. 173, *et seq.*

tractual operation . . . with the legitimate authorities of Columbia as a contravention of the neutrality statutes of the United States. The same question came up during the late Haitian insurrection when the insurgents who held . . . the ports of Haiti, sent agents to the United States to contest . . . the right of the legitimate government . . . to procure war-like supplies in the United States, and the result was wholly adverse to their pretensions".²⁶

Indeed, the principles of international law dictate that while aid may *not* be legally given to rebels opposing the established government, the very contrary applies with respect to aid to the established government as to which it is the duty of sister states to extend whatever assistance is possible. The furnishing of munitions to the established government constitutes an incident of legitimate commercial relations between two nations friendly to each other and cannot, as a matter of law, be regarded as "unneutral".

Applying the foregoing principles to the embargo against Spain, the legal status of the Spanish republican government and its legal relationship to the United States must first be noted. So far as the Government of the United States is concerned, the republican government of Spain, resident at Barcelona, is the legitimate representative of the people of Spain. The ambassador designated by that government is accredited by the United States State Department as the legal representative of the legal Spanish government; reciprocally, the American ambassador to Spain is accredited to the established government resident at Barcelona.

Professor Edwin Borchard, in a well-considered study, "Neutrality and Civil Wars",²⁷ has enunciated the obligation of the United States under international law as follows:

"International law requires the United States to treat the elected government of Spain as the lawful

26. Moore, *Digest of International Law*, Vol. 7, pp. 1076-9.

27. 31 *Am. J. of Law*, 304, 305.

government of Spain and until the belligerency of the rebels is recognized, as the only government entitled to receive the assistance of the United States in suppressing armed opposition. . . . This embargo against Spain was thought to be neutrality legislation, but it seems more likely the precise opposite".

To erect an embargo against commercial relations with the established government is to treat the government and the rebels as equals. Such action is wholly inconsistent with any notion of "neutrality" or "impartiality". "Neutrality" requires that outside powers shall refrain from taking any action which disturbs the relationship between the warring parties. An embargo which affects the government and the rebels alike disturbs the legal relationship between the government and the rebels by giving the rebels a standing which they do not have in law. Thus the embargo degrades and injures the government, and by doing so, helps the rebels. It does not make sense to call this "neutrality" or "impartiality".

The embargo against Spain, in prohibiting the shipment of war materials to the established government of Spain, is therefore a violation by the United States of the fundamental principle of international law which entitles a legitimate government threatened by insurrection to purchase from citizens of another friendly nation the means of self-defense.

The Embargo Against Spain Constitutes a Repudiation of Traditional American Foreign Policy

Until the imposition of the embargo, the United States was foremost among the nations adhering to the principle of aid to a legitimate government in the throes of civil war.²⁸ That principle was the foundation stone of American foreign policy. Indeed, the United States has had more occasion than any other nation in the world to enunciate the rule and to carry it into execution.

²⁸ Former Secretary of State Stimson holds this view. See *New York Times*, February 16, 1938.

During our own Civil War, the seceding Confederate States actually governed, at the outset, a substantial portion of the land of this country. The insurgents set up a complete apparatus of government over the Southern States; they possessed an army sufficient to enable the rebel South to assert to the world that it possessed all of the elements of independent government. Nevertheless, the Federal Government insisted that the rebels had no legal status. Secretary of State Seward protested to Great Britain against the assistance rendered to the South in violation of international law in building, manning, arming and equipping vessels intended for the use of the Confederates.²⁹ The Federal Government, as the established government, insisted on the sole right to purchase war materials. Great Britain did not deny the right of the Federal Government to purchase war materials. "Had England undertaken to embargo arms to both the North and the South," Professor Borchard points out, "the North might have lost the war."³⁰

In the rebellions of Cuba in 1917, Nicaragua in 1921, and Mexico in 1923, the United States promptly gave assistance to the legitimate governments in suppressing insurrection.³¹

Our government has repeatedly insisted upon the principle involved and stated that it would expect the rule to be followed by other governments in the event that the United States needed munitions. Hyde in his text on "International Law" refers to the declaration of Secretary of State Lansing, as follows:

"Secretary Lansing declared that the United States had, from the foundation of the Republic . . . advocated and practiced unrestricted trade in arms and military supplies, because it had never been the policy of the nation to maintain in time

29. E. G. Bernard, *A Historical Account of the Neutrality of Britain During the American Civil War* (1870), passim.; see p. 48, *et seq.* This interesting contemporary account reveals a strange parallel between Britain's attitude toward the Confederates and its present treatment of the Franco rebels. Only President Lincoln's firm stand prevented substantial British aid to the Rebels. See also Beaman, *Alabama Claims* (1871).

30. Borchard, "Neutrality for the United States", p. 337.

31. See Finch, *The United States and the Spanish Civil War*, 31 *Am. J. Int. Law*, pp. 74, 79 (1937).

of peace a large military establishment or stores of arms and ammunition sufficient to repel invasion by a well-equipped and powerful enemy and that in consequence the United States would, in the event of attack by a foreign power, be . . . seriously, if not fatally embarrassed by the lack of arms and ammunition. . . . 'The United States has always (Lansing said) depended upon the right and power to purchase arms from neutral nations in case of foreign attack. *This right which it claims for itself, it cannot deny to others.*' He contended that a nation whose policy and principle it was to rely upon international obligations and international justice to preserve its political and territorial integrity, might become the prey of an aggressive nation whose policy and practice it was to increase its military strength during times of peace with the design of conquest, unless the nation attacked *could . . . go into the markets of the world and purchase the means to defend itself against the aggressor.*"³²

At the time of the Cuban revolt against Spain, when American sympathies were overwhelmingly with the rebels, the President of the United States earnestly urged our citizens to obey the laws and "to prevent the territory of the United States from being abused as a vantage ground from which to aid those in arms against Spanish sovereignty."³³ President McKinley pointed out that despite the sympathy of Americans for the Cuban struggle for freedom, the "laws of the United States prohibit their citizens" from taking part "adversely to such established government."

When President Hoover issued a proclamation forbidding the shipping of munitions to the Brazilian rebels but expressly authorized such shipments to the established government, the Secretary of State answered the press criticism by explaining that under international law, only the established government was entitled to aid. He said:

32. Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, Vol. II, at p. 752.

33. President Cleveland's annual message of December 2, 1895.

"It is not a matter of choice on our part but it is a practice of mankind known as international law."³⁴

The history of the American foreign policy thus shows that the United States has for decades refused aid to insurgents revolting against tyrannical and despotic governments and insisted upon the duty to permit the sale of munitions to such tyrannical and despotic governments. It is the extraordinary fact that the first time that the United States has repudiated this practice has been in the case of Spain, a republican government defending itself against rebels who desire to restore a despotic and tyrannical government.

Viewed against the background of American policy, the embargo against Spain constitutes an unfriendly act against a sister republic.

The Embargo Against Spain Violates the Treaty Obligations of the United States

Following the conclusion of the Spanish-American War, the United States and Spain entered into the "Treaty of Friendship and General Relations",³⁵ which became, and since 1902 has continued to be, the basis of all intercourse between the two governments. The Treaty recites the desire of both nations "to consolidate on a permanent basis the friendship" between them and provides, in some detail, for the establishment of relationships between the two sovereignties, including such matters as exchange of Ambassadors, the rights and duties of consular officers, free access to domiciliary courts, religious liberty, ownership of real property, as well as a variety of other matters.

34. Quoted in 15 *Foreign Affairs* (1937) 260, Jessup, *The Spanish Rebellion and International Law*.

35. Treaty between the United States and Spain, signed at Madrid, July 3, 1902 (33 Stat. 2105). Ratification by the President pursuant to advice of Senate, Feb. 6, 1903. Ratification by Spain, March 30, 1903. Ratifications exchanged at Madrid, April 14, 1903. Proclamation, April 20, 1903. (Treaty Series No. 422, Government Printing Office.)

Article II of the Treaty provides:

“There shall be a full, entire and reciprocal liberty of commerce and navigation between citizens and subjects of the two High Contracting Parties.
 . . .”

Article XXX of the Treaty provides that it shall run for ten years and that thereafter it shall continue in full force and effect subject to abrogation or modification by either party upon twelve months' notice.

Neither the United States nor Spain has given any notice of abrogation or modification. The Treaty is in full force and effect today. Our State Department has so declared³⁶ as recently as August 11, 1937.

An embargo which forbids the shipment of articles of commerce and navigation, such as arms and munitions, by citizens and subjects of the United States to the government of Spain or to any person in Spain is a direct violation of the treaty obligations of the United States towards Spain and specifically constitutes a breach of Article II of the Treaty. The occurrence of an insurrection against the established government does not effect any suspension of the Treaty or warrant its repudiation. Indeed, as has already been demonstrated, in the event of insurrection, it is a practise of nations, in conformity with international law, to sell and to permit their citizens to sell war materials to the established government.

What is the legal status of a treaty between nations? The United States Supreme Court, as early as 1884, declared in *Edye v. Robertson*, 112 U. S. 580, 598 (The Head Money Cases):

“A treaty is primarily a contract between independent nations, which depends for the enforcement of its provisions on the interest and honor of the governments which are parties to it. If these fail, its infraction becomes the subject of international negotiations and reclamations, so far as the injured party chooses to seek redress, which may in the end be enforced by war.”

³⁶ Communication of State Department addressed to the Committee on International Law of the National Lawyers Guild. See 1 N. L. G. Quart. 54.

It was held in that case that enforcement of the provisions of treaties was not in the power of domestic courts but was rather a matter of *honor* between nations. At a time when the observance of the sanctity of international treaties is fast becoming the exception rather than the rule, when each treaty violation constitutes another step towards international anarchy and world war, it is especially unfortunate that the United States should expose itself to the charge of having become a treaty violator.³⁷

Apart from the consideration of national honor involved, the violation of the Treaty jeopardizes normal commercial relations between the two countries. The Treaty involved is the cornerstone of all intercourse and relations between the United States and Spain. A repudiation thereof jeopardizes American property interests and trade interests and the rights and privileges guaranteed to the citizens of each country by the Treaty.

By its terms, the Treaty may be abrogated or modified upon twelve months' notice. Certainly "it was an obligation of honor, on the part of the United States, if it found continued maintenance of full and entire liberty of commerce and navigation between the citizens and subjects of the two powers to be inconsistent with American interests, to amend the Treaty in the manner therein provided, instead of treating it as a scrap of paper".³⁸

37. President Roosevelt in his Chicago address, Oct. 6, 1937, stated: "The peace-loving nations must make a concerted effort in opposition to these violations of treaties . . . which today are creating a state of international anarchy and instability from which there is no escape through mere isolation or neutrality . . . There can be no stability or peace either within nations or between nations except under laws and moral standards adhered to by all. International anarchy destroys every foundation for peace. It jeopardizes either the immediate or the future security of every nation, large or small. It is therefore, a matter of vital interest and concern to the people of the United States that the sanctity of international treaties and the maintenance of international morality be restored." (*New York Times*, Oct. 7, 1937.)

See also address of Secretary of State Hull, at Nashville, Tennessee, June 3, 1938, wherein he stated: "All nations should uphold the principle of the sanctity of treaties and of faithful observance of international agreements".

38. Report of the Committee on International Law of the National Lawyers Guild, 1 N. L. G. Quart., 53, 55.

See also address of Secretary of State Hull, at Nashville, Tennessee, June 3, 1938, wherein he stated: "Modification of provisions of treaties, when need therefor arises, should be by orderly processes carried out in a spirit of mutual helpfulness and accommodation. Each nation should respect the rights of others and perform scrupulously its own established obligations."

It is clear from the foregoing that the United States, in establishing the embargo against Spain, has violated its treaty obligations to guarantee "full and entire liberty of commerce and navigation" to those citizens of the United States who desire commercial relations with the Spanish Government and its citizens.

Conclusion

The embargo against Spain constitutes a repudiation of traditional American foreign policy based on adherence to settled principles of international law and the observance of treaties. It encourages fascist aggression, promotes insurrection and armed revolt against legally constituted governments, and weakens the authority of international law and the sanctity of treaties.

A policy which thus contributes towards international anarchy and lawlessness must injure the interests of the American people. In the preservation of those interests the President should revoke the proclamation imposing the embargo against Spain.